UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

In re: HPE TRANSPORTATION, LLC, Case No. 17-50784
Chapter 11

Debtor in Possession.

Address: 12547 Warwick Blvd., Newport News, VA 23606
EIN: 90-0705424

MOTION FOR INTERIM ORDER, ON EMERGECY BASIS: (A) AUTHORIZING USE OF CASH COLLATERAL; AND, (B) APPROVING DIP FACTOR FACILITY

HPE Transportation, LLC, debtor in possession in this Chapter 11 bankruptcy case (the "Debtor"), by counsel, respectfully moves this Court pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 and Fed. R. Bankr. P. 4001 and 6004 for entry an interim order in the form attached hereto as **Exhibit A** (the "Interim Order"): (a) authorizing on an emergency basis the Debtor's interim use of cash collateral in accordance with the proposed *Budget* attached hereto as **Exhibit B** (the "Budget"), pending and subject to a final hearing thereon; and, (b) approving on an emergency basis the *Debtor in Possession Factoring Agreement* with RTS Financial Services, LLC, a copy of which is attached hereto as **Exhibit C** (the "DIP Factor Facility"), pending and subject to a final hearing on the same. The Debtor states the following in support thereof:

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Proposed Counsel to the Debtor

Summary

Applicable Rule / Requirement	Description
Parties with Interest in Cash Collateral	RTS Financial Service, LLC ("RTS") Other Potential Claimants: Small Business Financial Solutions, LLC; The Smarter Merchant; and, Corporation Service Company, as Representative
Purposes for Use of Cash Collateral & DIP Factor Facility	The Debtor requires the interim use of Cash Collateral, as defined herein, to fund its business operations in accordance with the proposed Budget, and under the restrictions of the Interim Order. The Debtor also requires approval of the DIP Factor Facility to fund its operations, and to ensure immediate and consistent cash flow throughout its Chapter 11 reorganization.
Material Terms of Use of Cash Collateral	See summary provided in ¶ 22 of this Motion.
Adequate Protection	The Interim Order authorizes RTS to collect, receive and retain all proceeds of Prepetition Accounts (as defined therein) that, as of the Petition Date, remain unpaid. The Debtor is further authorized to turnover any proceeds of such Prepetition Accounts that it receives directly to RTS. *See* Interim Order, ¶ J. The Interim Order further grants RTS superpriority status and a priming lien on Cash Collateral under Bankruptcy Code §§ 364(c)(1) & 364(d), as well as first priority lien and security interest in all assets and property of the Debtor (now owned or hereafter acquired) pursuant to sections 364(c)(2) and (c)(3) of the Bankruptcy Code, excluding all tractors, trucks and trailers of the Debtor and the bankruptcy estate *See* Interim Order, ¶¶ K, L & M.
Material Terms of DIP Factor Facility	See summary provided in ¶ 18 of this Motion.
Termination Date	The Debtor's use of Cash Collateral and the DIP Factor Facility are approved on an interim basis for the period through and including the later of July 31, 2017 at 11:59 PM or the hearing scheduled by this Court on continued or final approval of the Debtor's use of Cash Collateral and the DIP Factor Facility.

Jurisdiction & Factual Background

1. The Debtor is a limited liability company organized under the laws of the State of New Jersey that operates as an over-the-road trucking company, primarily transporting frozen or refrigerated goods across the United States.

2. The company was formed in April 2011 by the Debtor's designated representative, manager and sole member, Paul Meiseles ("Mr. Meiseles"), who has over 43 years of experience in the trucking and over-the-road hauling industry. The Debtor's headquarters is located in Newport News, Virginia.

3. The Debtor owns or leases a fleet of approximately twelve (12) tractor trucks and fifteen (15) trailers. As of the Petition Date, it employs ten (10) drivers and four (4) office employees.

4. On May 26, 2017 (the "Petition Date"), the Debtor filed a voluntary petition in this Court under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Order for relief was entered on the same date.

5. The Debtor filed for Chapter 11 bankruptcy to avoid repossession of several tractor trucks and trailers threatened by various secured claimants. In filing for bankruptcy, the Debtor hopes to reorganize its business, restructure its debt, and preserve the company's going concern for the benefit of its creditors.

6. No trustee has been appointed in this Case, and the Debtor is a debtor in possession having the rights, powers and duties afforded a trustee according to Bankruptcy Code §§ 1101, 1107 and 1108. No committee of unsecured creditors has been appointed.

7. The Court has original jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is also a core proceeding under 28 U.S.C. § 157(b)(2).

8. Venue is proper according to 28 U.S.C. §§ 1408 and 1409.

Cash Collateral

9. RTS Financial Services, Inc. ("RTS"), is an accounts receivable financing or "factoring" company. Since August of 2011, accounts and accounts receivable of the Debtor (the "Account(s)") have been subject to factoring agreements between the Debtor and RTS.

10. Based on information and belief, RTS maintains a properly perfected security interest in the Cash Collateral of the Debtor (as defined herein below). A copy of the pre-petition *Factoring Agreement* between RTS and the Debtor is attached hereto as **Exhibit D** (the "Factoring Agreement") and a copy of RTS' UCC Financing Statements on record with the Commonwealth of Virginia State Corporation Commission are attached hereto as **Exhibit E**.

11. Per the Factoring Agreement, RTS has continually purchased the Debtor's Accounts for upwards of 96% - 98% of the face value thereof, reserving the right to demand repurchase by the Debtor of all unpaid Accounts. Prior to the Petition Date, RTS made such demand upon the Debtor.

12. RTS has further communicated that it will not purchase additional Accounts unless and until the Debtor has obtained approval of this Motion and entry of the proposed Interim Order, including approval of the proposed DIP Factor Facility.

13. The Debtor believes that, as of May 26, 2017, RTS' claim against the Debtor and the Debtor's bankruptcy estate is approximately $221,000.00.

14. The Debtor has not yet filed its Schedule B with the Bankruptcy Court; however, based on information and belief, as of the Petition Date, RTS' security interest encumbers the following cash collateral of the bankruptcy estate, either directly or as proceeds thereof (the "Cash Collateral"):

a. Cash;

b. Monies held in bank accounts;

c. All outstanding Accounts that have not been sold to RTS, and such Accounts hereafter acquired;

d. All security reserves held by RTS, which currently amount to $6,000.00;

e. All proceeds of the foregoing, which include but are not limited to the Factor Proceeds (as defined herein below).

15. Other claimants may assert a security interest in the foregoing Cash Collateral, including, but not limited to: Small Business Financial Solutions, LLC; The Smarter Merchant; and, Corporation Service Company, as Representative. Such potential claimants shall receive notice of this Motion as provided for in the Certificate of Service attached hereto.

16. The Debtor continues to investigate and acquire information necessary to determine the validity, extent, and priority of all liens against the Cash Collateral. Based on current information and belief, RTS' security interest in the Cash Collateral is superior to other potential secured claimants.

DIP Factor Facility

17. The Debtor wishes to continue factoring its post-petition Accounts with RTS. Pursuant thereto, the Debtor and RTS (collectively, the "Parties") have reached the agreement provided for in the DIP Factor Facility.

18. The pertinent terms of the DIP Factor Facility, which are expressly conditioned upon this Court's review and approval, are summarized as follows:

a. An "Account" means any right to payment for services rendered by or on behalf of the Debtor. *See* DIP Factor Facility, § 1.

b. “Account Debtor” means a person or other entity, which is obligated to pay the Account. *See* DIP Factor Facility, § 1.

c. Debtor agrees to present and sell all of its Accounts arising from its business operations to RTS, which Accounts RTS may, in its sole discretion, elect to purchase. *See* DIP Factor Facility, §§ 2.1 & 2.2.

d. Such Accounts purchased by RTS are to be paid directly by such Account Debtor to RTS, and any Account proceeds received by the Debtor with regard to a purchased Account are to be held in trust for and immediately delivered to RTS. *See* DIP Factor Facility, § 2.2.

e. The purchase price for each purchased Account shall be the net amount of such Account, less RTS’ fee of 2.00% of such net amount. “Net amount” means the gross amount of the Account less any discount or allowance of any nature allowed to the Account Debtor (the “Factor Fee”). *See* DIP Factor Facility, § 3.1.

f. The Factor Fee is subject to commensurate adjustment based on changes in the U.S. Prime Rate. *See* DIP Factor Facility, § 3.1.

g. Payment of the purchase price to the Debtor is to be made as follows:

i. Upon presentation of an acceptable Account to be purchased, RTS will advance the purchase price less the security reserve to the Debtor;

ii. RTS shall at all times maintain on deposit with RTS a minimum security reserve of $2,000.00. In addition, for every $100,000.00 of unpaid Accounts purchased by RTS from Debtor, RTS shall withhold an additional security reserve in the amount of $2,000.00 from each such additional $100,000.00 of unpaid Accounts; and,

iii. RTS will (i) remit each $2,000.00 increment of security when and as the total unpaid Accounts falls below the $100,000.00 amount for which such security was required; and (ii) remit the remaining minimum $2,000.00 security reserve or any remaining security reserve upon the termination of the Agreement. *See* DIP Factor Facility, § 3.2.

h. The Debtor grants to RTS a security interest in the following:

“Assignor hereby grants to Factor as collateral, to secure all of the debts, liabilities and obligations of Assignor to Factor under this Agreement, including all reasonable costs and expenses incurred by Factor in connection with the enforcement of its rights under this Agreement, a security interest in the following property of Assignor: (a) all Accounts, wherever located or situated, and whether now existing or arising in the future, and whether now owned or at any time in the future acquired by Assignor, together with all proceeds and monies due or becoming due on such Accounts; all guaranties, insurance and security for such Accounts; all security reserves related to such Accounts; all of Assignor's rights and interests in the goods giving rise to such Accounts, and the rights associated with or related or pertaining to such goods, including without limitation the right of stoppage in transit and any and all related insurance, any items substituted therefore as replacements and all additions thereto; (b) all of Assignor's chattel paper, instruments, general intangibles, securities, contract rights and insurance associated with or related to the Accounts; (c) all equipment, inventory, and deposit accounts; and (d) all proceeds of any of the foregoing Accounts, property, rights and interests. Factor in its own name, or Factor's collateral agent Proprius 211 Trust in its name as the agent of Factor, may file financing statements and all amendments thereto describing as the collateral any or all of the foregoing collateral by any description Factor or its collateral agent deems appropriate in any jurisdiction or office Factor or its collateral agent deems appropriate to perfect Factor's security interest in foregoing collateral." *See* DIP Factor Facility, § 4.

i. The DIP Factor Facility includes the following provisions concerning default thereof:

"In the event of Assignor's breach of any warranty made in this Agreement or the Assignor's failure to observe or perform any of the provisions or obligations of this Agreement, Assignor shall be in default, and, if the Assignor fails to cure such default within five (5) business days after written notice from Factor, Factor may enforce payment and exercise any and all of the rights and remedies provided by Article 9 of the Uniform Commercial Code. In addition, upon default by Assignor that is not timely cured, Factor shall also have the right to take all actions necessary to collect the Accounts directly from the Account Debtors." *See* DIP Factor Facility, § 4.

j. All Accounts purchased by RTS are purchased with full recourse, and RTS maintains the right to demand that the Debtor repurchase any purchased Account. Unpaid Accounts must be repurchased by the Debtor within one hundred and twenty (120) days of when due. No interest shall accrue on unpaid Accounts. *See* DIP Factor Facility, § 5.

k. RTS may recover from the Debtor all reasonable and necessary attorneys fees, court costs and expenses. *See* DIP Factor Facility, § 9.

l. RTS may terminate the DIP Factor Facility upon ninety (90) days' notice, during which period RTS shall continue to factor Accounts in a manner consistent with its purchases prior to the termination notice. RTS may also terminate the DIP Factor Facility upon sixty (60) days' notice prior to the end of either the initial or renewal term.

19. The DIP Factor Facility includes a "Special Stipulation," which provides that should the Debtor's monthly minimum factor amount exceed $300,000.00, the Factor Fee shall decrease from 2.00% to 1.50%.

20. The DIP Factor Facility also includes a personal guaranty by Mr. Meiseles

Interim Order

21. The proposed Interim Order represents the agreement reached between the Debtor and RTS as to the former's use of Cash Collateral and the additional protection afforded the latter in exchange for the DIP Factor Facility.

22. The relevant terms of the DIP Factor Facility, which are expressly conditioned upon this Court's review and approval, are as follows:

f. "This Order shall govern the Debtor's use of Cash Collateral and any and all proceeds thereof on an interim basis for the period through and including the later of July 31, 2017 at 11:59 PM or the hearing scheduled by this Court on approval of the Debtor's continued or final use of Cash Collateral (the "Termination Date")." *See* Interim Order, ¶ B.

g. "The DIP Factor Facility is APPROVED, and the Debtor is authorized on an interim basis to factor or otherwise sell its Accounts in accordance with the terms and provisions of the DIP Factor Facility and this Order for the period through and including the Termination Date." *See* Interim Order, ¶ C.

h. "The terms and conditions of the DIP Factor Facility apply to all Accounts purchased by Factor, including (i) Accounts purchased by Factor prior to the Petition Date (the "Prepetition Accounts"); (ii) Accounts purchased by Factor following the Petition Date (the "Postpetition Accounts"). In the event of default under the DIP Factor Facility, and upon five (5) days' written notice to the Debtor, RTS shall have immediate relief from the automatic stay (to the extent applicable) to assert all rights and remedies with respect to all Prepetition Accounts and Postpetition Accounts, including but not limited to its rights under the DIP Factor Facility to demand repurchase of the same." *See* Interim Order, ¶ D.

i. “The Debtor is authorized to: (a) execute the DIP Factor Facility and all other documents RTS may find reasonably necessary to implement the transactions contemplated therein; and, (b) perform all obligations under and comply with all terms and provision of the DIP Factor Facility and this Order. Upon execution and delivery thereof, the DIP Factor Facility shall constitute the valid and binding obligations of the Debtor enforceable in accordance with its terms. To the extent there exists any conflict among the Motion, the DIP Factor Facility and this Order, this Order shall govern and control.” *See* Interim Order, ¶ E.

j. “The Debtor is authorized to receive, collect and shall deposit all Cash Collateral, including all proceeds derived from Accounts sold or factored under the DIP Factor Facility (the “Factor Proceeds”), now or hereafter in its possession or control into its debtor in possession (“DIP”) accounts promptly upon receipt thereof.” *See* Interim Order, ¶ F.

k. “The Debtor is authorized to make use of all Cash Collateral, including all proceeds of all Accounts that RTS in its discretion neither purchases nor factors under the DIP Factor Facility, in the ordinary course of business according to the Budget, subject to RTS’ continuing first priority lien and security interest therein, and subject to the terms and conditions of this Order.” *See* Interim Order, ¶ G.

l. “The Debtor is further authorized to make use of all Cash Collateral, including all proceeds of all Accounts that RTS in its discretion neither purchases nor factors under the DIP Factor Facility, to: (a) Pay all allowable administrative claims under Bankruptcy Code §§ 503(b) or 507(b); and, (b) Deposit all Cash Collateral remaining after payment of all Operating Expenses listed in the Budget and all allowable administrative claims under Bankruptcy Code §§ 503(b) or 507(b) in a DIP account designated for reorganization costs and non-ordinary course administrative expenses, which the Debtor shall create and identify as the ‘DIP Reorganization Fund.’” *See* Interim Order, ¶ H.

m. “The Debtor may only use Cash Collateral for purposes not provided for in the Budget or this Order upon prior written authorization of RTS or by further order of this Court.” *See* Interim Order, ¶ I.

n. “RTS is authorized to collect, receive and retain all proceeds of Prepetition Accounts that, as of the Petition Date, remain unpaid. The Debtor is further authorized to turnover any proceeds of such Prepetition Accounts that it receives directly to RTS.” *See* Interim Order, ¶ J.

o. “All amounts due to RTS under the DIP Factor Facility, including amounts due to RTS in connection with Prepetition Accounts, are granted superpriority administrative expense status under Bankruptcy Code § 364(c)(1) with priority over all costs and expenses of administration of this case that are incurred under any provision of the Bankruptcy Code, except such administrative expenses approved by this Court under Bankruptcy Code §§ 327, 330 and 331." *See* Interim Order, ¶ K.

p. "All amounts due to RTS under the DIP Factor Facility, including amounts due to RTS in connection with Prepetition Accounts, are secured by first priority liens on and security interest in all assets and property of the Debtor (now owned or hereafter acquired) pursuant to sections 364(c)(2) and (c)(3) of the Bankruptcy Code, excluding all tractors, trucks and trailers of the Debtor and the bankruptcy estate." *See* Interim Order, ¶ L.

q. "RTS is further granted a senior priming lien under Bankruptcy Code § 364(d) against all Cash Collateral to secure all obligations and amounts due or to become due under the DIP Factor Facility, with priority over all existing liens in the Cash Collateral." *See* Interim Order, ¶ M.

r. "The liens provided herein secure all of the Debtor's obligations to RTS. Such liens shall not, without the written consent of RTS, be made subject to, or *pari passu* with, any other lien or security interest, and shall be valid and enforceable against the Debtor and any trustee appointed in this case upon the conversion of the Case to a proceeding under chapter 7 of the Bankruptcy Code, or in any other proceedings, and/or upon the dismissal of the Case." *See* Interim Order, ¶ N.

s. "All sales of Accounts by the Debtor to RTS following entry of an Order approving the DIP Factor Facility are hereby approved pursuant to Bankruptcy Code § 363, and RTS is approved as a buyer in good faith in accordance with Bankruptcy Code § 363(m) and afforded the protections thereof." *See* Interim Order, ¶ O.

t. "No transfer by the Debtor to RTS or lien granted to RTS by the Debtor shall be avoidable under the provisions of chapter 5 of the Bankruptcy Code." *See* Interim Order, ¶ P.

Relief

23. The Debtor requires the interim use of Cash Collateral to fund its business operations in accordance with the proposed Budget. The Debtor also requires approval of the DIP Factor Facility to fund its operations, and to ensure immediate and consistent cash flow throughout its Chapter 11 reorganization.

24. Absent such relief, the Debtor will be unable to continue operating to the detriment of its bankruptcy estate, unsecured creditors, and employees.

25. The Debtor proposes to use the Cash Collateral in the ordinary and normal course of its business according to the Budget. Such use is necessary to avoid immediate and irreparable harm to the Debtor and its estate.

26. The Debtor's proposed interim use of Cash Collateral satisfies the requirements of Bankruptcy Code § 363(c)(2). To the extent other claimants assert a security interest in the Cash Collateral, the Debtor's interim use is limited in duration and subject to further and final approval of the Court. In consideration of the Bankruptcy Code, the Fed. R. Bankr. P., and due process, such claimants shall receive notice of any future proceeding concerning the continued or final approval of the Debtor's use of Cash Collateral and afforded opportunity to assert their rights under Bankruptcy Code.

27. RTS consents to the Debtor's use of the Cash Collateral from the period between the Petition Date and the expedited hearing to be scheduled on this matter. RTS further consents to the Debtor's use of the Cash Collateral, subject to approval of the proposed Interim Order, and, by such consent, acknowledges that its security interest in the Cash Collateral is adequately protected under the terms of and protections afforded by the Interim Order.

28. The proposed DIP Factor Facility and the terms of the Interim Order related thereto satisfy the requirements of Bankruptcy Code §§ 364(c) and 364(d).

29. The DIP Factor Facility is necessary to preserve both the Debtor's going concern and the assets of the bankruptcy estate. Without the DIP Factor Facility, the Debtor's business will be subject to payment delays and other cash flow difficulties associated with a standard thirty (30) to ninety (90) day invoice payment schedule. Furthermore, the discontinuation of the

Debtor's factoring arrangement with RTS will likely cause an immediate and devastating post-petition cash crunch. If the company were to lose its current factoring cash inflows, the Debtor would need, at best, several months to directly collect sufficient monies from its Accounts to operate the business on a going forward basis. In light of the Debtor's current cash position, it is doubtful the Debtor's business operations could survive such a transition.

30. The terms of the Interim Order and the DIP Factor Facility are fair, reasonable and adequate given the circumstances of the Debtor. The terms of the DIP Factor Facility are substantially similar to the Debtor's pre-petition Factoring Agreement with RTS, and both the Debtor and its bankruptcy estate will benefit from what is essentially a continuation of the Debtor's ordinary course of business.

31. In the Debtor's business judgment, it is unlikely that the business will find more favorable terms from another accounts receivable financing or factoring company.

32. While the Debtor and Debtor's counsel are still reviewing the validity, extent and priority of any and all liens on the Debtor's assets, it is possible that the entire bankruptcy estate is subject to secured claims. After assessing the financial condition of the Debtor, communicating with other potential factoring partners, and taking into consideration the foregoing, the Debtor determined that factoring on an unsecured or junior priority basis is not available, and RTS appears to be the best and only source for post-petition factoring.

33. RTS' participation in the DIP Factor Facility and consent to the Debtor's use of Cash Collateral are contingent upon approval of both the terms of the DIP Factor Facility and a grant of the rights and benefits provided for under the Interim Order.

34. Since the DIP Factor Facility has been negotiated in good faith and at arm's-length, and no consideration is being provided to any party for obligations arising under the DIP

Factor Facility, except as provided therein, the Debtor requests that the DIP Factor Facility be accorded the benefits of Bankruptcy Code §§ 364(c) & 364(e).

35. The Debtor has agreed, subject to approval by this Court, to pay the reasonable and necessary attorney fees, court costs and expenses incurred by RTS relative to this Bankruptcy Case, this Motion, the Interim Order, and the DIP Factor Facility. The Debtor considered this obligation in determining the exercise of its sound business judgment and believes it acceptable in exchange for the DIP Factor Facility.

36. The Debtor has determined in its business judgment that the Interim Order and DIP Factor Facility are in the best interests of the Debtor, its bankruptcy estate, its creditors and parties in interest.

37. The factual allegations in the Motion are made without prejudice to any right of the Debtor to dispute or contest the claim(s), security or priority of any claimants in this case.

WHEREFORE, based on the foregoing, and for good cause shown, the Debtor respectfully moves this Court for entry of the Interim Order:

A. Granting this Motion;

B. Approving the Debtor's interim use of Cash Collateral in accordance with the Budget and the terms of the Interim Order;

C. Approving the DIP Factor Facility on an interim basis in accordance with the terms of the Interim Order;

D. Setting a hearing on continued or final approval of the Debtor's use of Cash Collateral and the DIP Factor Facility;

E. Granting such other and further relieve that this Court deems just and appropriate.

DATE: May 26, 2017

HPE TRANSPORTATION, LLC.

BY: */s/ Joseph T. Liberatore*
Of Counsel

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CERTIFICATE OF SERVICE

I certify that on May 26, 2017, pursuant to Fed. R. Bankr. P. 2002, 4001 & 6004 and LBR 9013-1, a true copy of the foregoing Notice was:

- Electronically filed with the Clerk of the Court using the CM/ECF system, which will send e-mail notice of and serve such filing to those parties who are currently listed in the Electronic Mail Notice List for this Case;

- Served by U.S. Mail, postage pre-paid to the parties listed on the attached Mailing Matrix, which includes: the Debtor, U.S. Trustee, and all creditors and parties in interest to this case, including the 20 largest unsecured claims and the following:

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/s/ Joseph T. Liberatore